

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SMILEY J. HARRIS,

Plaintiff,

v.

BUSINESS, TRANSPORTATION,  
AND HOUSING AGENCY, et al.,

Defendant.

No. C 07-0459 PJH

**ORDER DISMISSING COMPLAINT**

Plaintiff Smiley J. Harris filed this action on January 23, 2007, and also filed a request for leave to proceed in forma pauperis ("IFP"), and a motion for preliminary injunction. On April 2, 2007, plaintiff filed a first amended complaint, alleging nine causes of action, including claims of false arrest, false imprisonment, and malicious prosecution, in violation of the United States and California Constitutions, against ten defendants.

On April 17, 2007, the court issued a 24-page order dismissing the first amended complaint pursuant to 28 U.S.C. § 1915(e) for failure to state a claim and lack of subject matter jurisdiction, and denying the IFP request and the motion for preliminary injunction. The dismissal was with leave to amend, and the court provided detailed instructions regarding amendment.

On May 15, 2007, plaintiff filed a second amended complaint, alleging twelve causes

1 of action, against ten defendants, and also filed a second motion for preliminary injunction.  
2 While plaintiff followed the court's instructions regarding amendment to some extent, he did  
3 not eliminate the defendants and claims that had been previously dismissed with prejudice.

4 On May 30, 2007, the court issued a 17-page order dismissing the second amended  
5 complaint pursuant to 28 U.S.C. § 1915(e), and denying the motion for preliminary  
6 injunction. In the order, the court again went through the complaint claim by claim, and  
7 defendant by defendant, and clearly set forth what plaintiff was required to allege in any  
8 further amended complaint in order to survive another dismissal.

9 On June 29, 2007, plaintiff filed the third amended complaint, alleging twelve causes  
10 of action, against thirteen defendants. The third amended complaint differed little from the  
11 second amended complaint, other than the addition of defendants. In particular, despite  
12 the court's clear and explicit dismissal with prejudice of certain claims and defendants,  
13 plaintiff re-alleged nearly every claim as before, and even added new defendants.

14 On July 5, 2007, the court issued an order dismissing the third amended complaint.  
15 The order stated that plaintiff would be given one more opportunity to file an amended  
16 complaint, and provided clear and specific instructions regarding amendment. The court  
17 warned plaintiff that failure to amend the complaint in accordance with the court's  
18 instructions would result in dismissal of the action with prejudice.

19 On July 24, 2007, plaintiff filed a fourth amended complaint, alleging eleven causes  
20 of action, against fifteen defendants. The fourth amended complaint is almost identical to  
21 the third amended complaint, except that it adds defendants and eliminates one cause of  
22 action, and also substitutes a prayer for "any further and other relief this court deems just  
23 and proper" for the previous prayer for damages and injunctive relief. Notwithstanding all  
24 the court's previous instructions regarding amending the complaint, the fourth amended  
25 complaint asserts claims that are time-barred and frivolous, against defendants who are  
26 immune from suit.

27 When a complaint is filed IFP, it must be dismissed prior to service of process if it is  
28 frivolous, malicious, fails to state a claim, or seeks monetary damages from defendants

1 who are immune from suit. See 28 U.S.C. § 1915(e)(2); see also Franklin v. Murphy, 745  
2 F.2d 1221, 1226-27 (9th Cir. 1984). A complaint may also be subject to dismissal for  
3 failure to state a claim when an affirmative defense appears on its face. Jones v. Bock,  
4 127 S.Ct. 910, 921 (2007). When a complaint is dismissed under § 1915(e), the plaintiff  
5 should be given leave to amend the complaint with directions as to curing its deficiencies,  
6 unless it is clear from the face of the complaint that the deficiencies could not be cured by  
7 amendment. See Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995).

8 In addition, district courts have inherent powers to control their dockets and may  
9 impose sanctions, including dismissal, in the exercise of that discretion. Hamilton Vopper &  
10 Steel Corp. v. Primary Steel, Inc., 898 F.2d 1428, 1429 (9th Cir. 1990); see also Chambers  
11 v. NASCO, Inc., 501 U.S. 32, 44 (1991). Dismissal is an appropriate sanction for failure to  
12 follow the orders of the court. Federal Rule of Civil Procedure 41(b).

13 The Ninth Circuit allows dismissal under Rule 41(b) only after the district court has  
14 weighed the following factors: (1) the public's interest in expeditious resolution of litigation;  
15 (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants;  
16 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of  
17 less drastic sanctions. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir.  
18 2000). In this case, the court finds that the public's interest in expeditiously resolving this  
19 litigation and the court's interest in managing its docket weigh in favor of dismissal with  
20 prejudice, as plaintiff has, through three iterations of his complaint, steadfastly refused to  
21 amend the complaint in accordance with the court's orders.

22 The third factor, the risk of prejudice to the defendants also weighs in favor of  
23 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay  
24 in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The  
25 fourth factor, the public policy favoring disposition of case on their merits, is greatly  
26 outweighed by the other factors favoring dismissal. Finally, a court's warning to a party that  
27 his failure to obey the court's order will result in dismissal satisfies the "consideration of  
28 alternatives" requirement. Ferdick v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992);

1 see also Malone v. U.S. Postal Service, 833 F.2d 128, 132-33 & n.1 (9th Cir. 1987)

2 (warning that action may be dismissed as appropriate sanction is considered less drastic

3 alternative sufficient to satisfy last factor).

4 In accordance with the foregoing, the court finds that this action must be

5 DISMISSED with prejudice.

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7 **IT IS SO ORDERED.**

8 Dated: August 31, 2007



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PHYLLIS J. HAMILTON  
United States District Judge